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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 12, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *CC Docket No. 94-54, RM 8012 - Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*

On behalf of Pacific Bell and Pacific Bell Mobile Services, please find enclosed an original and six copies of their *"Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan F. Creighton

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	
	)	

COMMENTS OF PACIFIC BELL AND PACIFIC BELL MOBILE SERVICES

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Date: September 12, 1994

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SUMMARY

In the interests of regulatory parity, Pacific Bell and Pacific Bell Mobile Services support the application of an equal access requirement to cellular, PCS and wide-area SMR providers. For equal access purposes the service area should be an MTA. Equal access obligations such as "1+" dialing should be applied equally to all competing CMRS providers. There is no equal access obligation to allow IECs access to customer profile information in the databases of CMRS providers.

The current federal model with respect to interconnection between the local exchange carriers and the cellular carriers should be applied to interconnection between the local exchange carriers and CMRS providers. To the extent that it is technically feasible, interconnection between CMRS providers should be required to enable the ubiquitous origination and termination of telecommunications.

The Commission should support limited interoperability to permit roaming onto cellular analog systems by PCS providers.

Resale of PCS services among licensees serving the same territory should not be required. PCS licensees should be permitted to resell cellular service and should be allowed to migrate cellular customers to PCS systems when the PCS systems are operable.

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COMMENTS OF PACIFIC BELL AND PACIFIC BELL MOBILE SERVICES

Pacific Bell and Pacific Bell Mobile Services hereby comment on the Notice of Proposed Rulemaking and Notice of Inquiry ("NPRM") in the above-captioned proceeding. In this proceeding the Commission addresses three issues: 1) whether to impose equal access obligations on commercial mobile radio service ("CMRS") providers; 2) what rules should govern requirements for interconnection service provided by local exchange carriers ("LECs") to CMRS providers; and 3) whether to propose rules requiring CMRS providers to interconnect with each other.[1]

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[1] In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, RM-8012, Notice of Proposed Rulemaking and Notice of Inquiry, released July 1, 1994, para. 1.

I. REGULATORY PARITY REQUIRES THAT EQUAL ACCESS REQUIREMENTS BE APPLIED TO ALL COMPETING MOBILE SERVICE PROVIDERS.

This proceeding continues the Commission's examination of the regulation of mobile services as a result of the Omnibus Budget and Reconciliation Act which amended Section 332 of the Communications Act. The Commission determined that Congress had two principal objectives in amending Section 332. One, it sought to achieve regulatory parity among similar services. Two, it sought to reduce unnecessary regulation of CMRS.[2]

In this NPRM the Commission tentatively concludes that equal access obligations should be imposed on cellular carriers.[3] The Commission seeks comment on that conclusion as well as on whether equal access obligations should be imposed on other CMRS providers.[4]

The Commission notes that since the BOC-affiliated cellular providers have an equal access obligation pursuant to the MFJ, the principle of regulatory parity may require an equal access requirement for all cellular providers.

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[2] Id. at para. 2.

[3] Id. at para. 3.

[4] Id.

> Under these circumstances, disparate treatment of different cellular carriers with respect to equal access obligations may be inconsistent with congressional intent and the Commission's efforts in the CMRS Second Report to reshape our regulatory structure to give CMRS providers the opportunity to compete under comparable rules. We note here that this may also be true for any potentially competing mobile services, including broadband PCS or wide-area SMR systems.[5]

We agree that the principle of regulatory parity requires that all competing CMRS providers such as cellular, PCS and wide-area SMRS should be under the same equal access obligation. There is no parity if BOC-affiliated CMRS providers are under an equal access obligation, while their competitors are not, and true competition will never exist. Thus, as long as the BOC-affiliated CMRS providers are subject to an equal access requirement, all competing CMRS providers should also be subject to the same equal access requirement. However, as we have indicated in prior pleadings before the Commission, the ultimate regulatory regime applicable to all competing radio-based services should be one in which no equal access obligations are imposed within competitive markets.[6]

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[5] Id. at para. 39.

[6] See In the Matter of Policies and Rules Pertaining to the Equal Access Obligations of Cellular Licenses, RM-8012, Comments of Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis' Group, and US West Inc., August 3, 1992.

II. THE APPROPRIATE SERVICE AREA DEFINITION FOR EQUAL ACCESS PURPOSES SHOULD BE AN MTA.

In the event that the Commission decides to impose an equal access requirement on CMRS providers, it seeks comment on the appropriate service boundary, such as a LATA or a Metropolitan Trading Area ("MTA"), where calls must be handed off, and whether the service areas should vary among the various types of services such as cellular, PCS and wide-area SMR.[7]

The District Court has repeatedly recognized LATA boundaries create hardships for wireless services. In 1983 the District Court granted integrated waiver requests for nine specific metropolitan complexes that crossed LATA boundaries.[8] Since divestiture the Department has endorsed, and the Court has approved, 37 waiver requests for expanded cellular calling areas. This case-by-case approach has proven to be very time-consuming. For this reason, the BOCs filed a generic wireless waiver which requests that local calling areas for equal access purposes be expanded to the limits set by

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[7] NPRM, paras. 67-68.

[8] United States v. Western Electric Co., 578 F. Supp. 643 (D.D.C. 1983)

Metropolitan Trading Areas ("MTA").[9]

MTAs fit the realities of the wireless marketplace better than LATAs. They are large enough to accommodate a mobile community of interest. For example, 31 of the 37 cellular waivers granted fall within a single MTA.[10] The service area clusters of non-BOC cellular providers also illustrate the relevance of the MTA boundary definition. For example, in California McCaw's systems do not cross any boundaries of the two California MTAs. Likewise, in Florida McCaw's cellular clusters do not cross any MTAs.[11] In addition, consumers will benefit from larger service boundaries for equal access purposes. The District Court has recognized that confining BOC mobile systems within LATAs would result in "a substantial loss in economic efficiencies which could be produced by integrated, multi-LATA systems."[12]

There are two types of efficiencies that are affected by the size of a service area. One, every time a call crosses a

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[9] Under the BOCs' proposal the MTA provides the outer limit for expanded local calling areas. That is, if a call is not treated as a local call (flat-rate with no toll charge) even if it is within the MTA boundary, at the point it ceases to be local, it must be handed off to an interexchange carrier.

[10] See Exhibit A.

[11] See Exhibit A.

[12] United States v. Western Electric, 578 F. Supp. at 648-49.

boundary for equal access purposes, the caller incurs a long distance charge as a result of the call being handed off to an interexchange carrier ("IEC"). If the service areas for equal access purposes are small, calls cross boundaries more frequently and callers must pay long distance charges more often. Likewise, larger areas generally mean a lower cost for consumers because of the reduced likelihood of crossing service area boundaries and incurring long distance charges. Two, smaller service areas also require duplication of equipment in each area and make underutilization more likely. Large areas generally result in more efficient utilization of equipment. Consumers and CMRS providers both will benefit from MTA service area boundaries for equal access purposes for all CMRS providers.

The Department of Justice has asked the District Court to defer redefining cellular local calling areas until the Commission has decided what, if any, equal access structure to impose on the wireless industry.[13]

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[13] United States v. Western Electric, Civil Action No. 82-0192 HHG, Memorandum of the United States in response to the Bell Companies' Motion for Generic Wireless Waivers, p. 48, July 25, 1994.

The Commission has already concluded that MTAs along with BTAs are the appropriate service areas for PCS service.[14] We urge the Commission to take the lead on this issue and recognize MTAs provide appropriate boundaries for the equal access obligations of CMRS providers.

III. INTERCONNECTION REQUIREMENTS SHOULD BE CONSISTENT WITH CURRENT EQUAL ACCESS REQUIREMENTS.

The Commission seeks comment on whether CMRS providers should be required to permit IECs to interconnect with their networks at more than one point within a given license or service area, and also on whether there must be a point of interconnection in every service territory, or whether CMRS providers should be permitted to backhaul the traffic to a POP outside of the service territory.[15] Consistent with current equal access requirements imposed on BOCs, we support requiring a minimum of one point of interconnection in each service territory.

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[14] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Service, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, para. 73 (1993).

[15] NPRM, para. 69.

The Commission also seeks comment on whether a CMRS provider should be required to permit an IXC to choose whether to interconnect with the CMRS provider through a LEC access tandem connection or by direct connection to the CMRS provider.[16] We support permitting the IXC to choose whether to interconnect through an access tandem or through direct connection via a port at the MTSO.

IV. EQUAL ACCESS OBLIGATIONS SUCH AS "1+" DIALING AND A PRESUBSCRIPTION/BALLOTING PROGRAM SHOULD BE APPLIED EQUALLY TO ALL COMPETING CMRS PROVIDERS.

The Commission tentatively concludes that the equal access obligation should include the provision of 1+ dialing and that it should adopt presubscription and balloting rules for cellular providers similar in scope to those proposed by Bell Atlantic.[17]

We support "1+" Dialing as an equal access requirement for competing CMRS providers. The following describes the proposed balloting plan associated with our generic wireless waiver before the District Court.

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[16] Id. at para. 79.

[17] Id. at paras. 85 and 92.

All customers of the Bell Cellular Company Licensees ("BCLs") will be free to choose among participating IECs, including the BCL itself or an affiliate thereof that provides interexchange cellular service.

New customers will be asked to choose an IEC from among participating IECs. Each BCL will list those IECs in a non-discriminatory manner and will periodically rotate the listing on a non-discriminatory basis to ensure that each IEC has a random chance of being listed at the top of the list. New customers who fail to choose an IEC will not receive interexchange service from their cellular telephones.

Existing customers of the BCLs who have already chosen an IEC will not be required to make a new choice of IEC. Such customers will retain the IEC that they have already chosen absent an affirmative indication by a customer that he or she wishes to change IECs.

In the interest of regulatory parity the Commission should adopt "1+" dialing and a balloting process as described above and apply these requirements to any CMRS provider that is required to provide equal access.

V. INFORMATION NEEDED FOR BILLING PURPOSES SHOULD BE PROVIDED ON A NON-DISCRIMINATORY BASIS.

The Commission seeks comment on whether cellular carriers should be required to offer on reasonable and non-discriminatory terms and conditions, all information interexchange carriers need to bill their interexchange customers including ANI information, call detail reports and cellular BNA data.[18] The Commission also seeks comment on whether this information should be provided under contract or tariff.[19]

Cellular carriers should be required to provide to interexchange carriers the information necessary to do billing on reasonable and non-discriminatory terms. Billing contracts have been working well. There is no reason to require tariffing for billing information in this instance. All competing CMRS providers should also be under the same requirement.

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[18] Id. at para. 99.

[19] Id.

VI. IECS SHOULD NOT BE GIVEN ACCESS TO THE DATABASES OF CMRS PROVIDERS.

The Commission seeks comment on the issue of IEC access to any cellular call screening, routing and delivery data that may be designated in a "customer profile maintained in a cellular carrier's database."[20] Customer profile information is the proprietary information of the cellular or other CMRS provider. Consequently, IXCs should have no direct access to this information.

To the extent an IEC is also acting as a CMRS provider, it will have its own databases. We have no objection to queries via the SS7 network between CMRS databases for information that would allow calls to be routed to the appropriate destination, consistent with the instructions of the customer of the CMRS provider.

VII. THE COMMISSION SHOULD NOT REQUIRE FEDERAL TARIFFS FOR LEC INTERCONNECTION TO CMRS PROVIDERS.

The Commission requests comment on whether to require LECs to offer interconnection to CMRS providers under tariff pursuant to Section 203 or to retain the current requirement

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[20] Id. at para. 100, and para. 134.

that LECs establish the terms and conditions of interconnection through good faith negotiations with CMRS providers.[21]

With respect to cellular interconnection to LECs, the Commission adopted a policy statement rather than specific rules because of the existence of a variety of interconnection arrangements and system designs. Part of that policy statement acknowledged the intrastate nature of cellular communications and stated that the "compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern."[22] It went on to note that "such arrangements are properly the subject of negotiations between the carriers as well as state regulatory jurisdiction."[23] In some states interconnection arrangements are individually negotiated. In others, such as California, state interconnection tariffs have been ordered.

This policy has worked well and we see no reason for the Commission to require the filing of interstate interconnection tariffs which increases regulation and places

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[21] Id. at para. 113.

[22] In the Matter of the need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 RR 1275, 1284-85, 1986.

[23] Id, at 1285.

demands on the Commission resources with little benefit. As the Commission notes, although there were initial difficulties in the negotiation process, "most cellular companies express confidence that they currently receive fair, non-discriminatory interconnection arrangements with the LECs."[24]

There is no reason to depart from the Commission's current policy with respect to interconnection of cellular carriers to the networks of the LECs. The same policy should be applied to interconnection between all CMRS providers and the LECs. The Section 208 complaint process is available to any party who feels that he or she is unable to obtain appropriate interconnection with a LEC.

The Commission also seeks comment on MCI's suggestion that interconnection furnished to CMRS providers be structured to allow interconnection arrangements that would be purchased under the LEC expanded interconnection tariffs.[25] MCI's suggestion presupposes that collocation (physical or virtual) is a necessary component of interconnection for CMRS providers. We do not believe this to be the case, particularly since CMRS

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[24] NPRM, para. 112

[25] Id, at para. 117.

providers do not generally have fiber facility-based networks.[26] Moreover, the expanded interconnection tariffs for switched and special access provide a fiber facility-based "connection" in the central office for interconnection to switched and special access services. To the extent that the current expanded interconnection tariffs meet the needs of CMRS providers, there are no restrictions in the tariff that would prohibit them from purchasing service via the expanded interconnection tariffs for use with fiber optic facilities[27] that interconnect with switched and special access services.

In the event that the Commission concludes that collocation and federal tariffing of interconnection is required, the expanded interconnection tariffs provide a framework that should be used for a collocation tariff for mobile services access. The primary modification that would be needed is to create an expanded interconnection cross connect

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[26] We also do not believe that either form of collocation, as ordered by the Commission in the Expanded Interconnection proceeding is necessary for interconnection with fiber optic facilities. Various issues concerning collocation ae subject to petitions for review. Pacific Bell et al. v. FCC et al., Case No. 94-1547 (D.C. Cir.)

[27] Interconnection via a microwave link will be handled on an individual case basis. In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, released July 25, 1994.

specifically for interconnection to mobile services. However, in order to meet customer needs currently satisfied by negotiated arrangements, a federal tariff for CMRS interconnection should contain rate elements for call setup and duration for switching and a transport element, as well as options for term agreements.

The Commission also seeks comment on whether it is contrary to the public interest to permit negotiated interconnection arrangements in certain circumstances and to require tariffed interconnection arrangements in other circumstances.[28] The public interest is best served by policies that recognize different circumstances require different responses. The Commission's cellular policy on interconnection with the LECs has worked well. The Commission should not conclude that all interconnection arrangements must now be tariffed in the interest of consistency.

Finally, the Commission requests comment on how to avoid conflicts with state interconnection tariffing requirements.[29] As noted above, California will soon have state interconnection tariffs. If there are both state and federal

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[28] Id, at para. 118.

[29] Id, at para. 120.

tariffs, the different rate structures encourage arbitrage. The best way to avoid a conflict and/or manipulation of rate levels is to decline to adopt a requirement for a federal interconnection tariff.

VIII. INTERCONNECTION BETWEEN CMRS PROVIDERS SHOULD BE REQUIRED TO ENABLE THE UBIQUITOUS ORIGINATION AND TERMINATION OF TELECOMMUNICATIONS TO THE EXTENT IT IS TECHNICALLY FEASIBLE.

The Commission seeks comment on issues associated with interconnection obligations between other CMRS providers.[30] As we indicated in our comments in the NPRM in GN Docket No. 93-252, we strongly support a right to interconnection between commercial mobile radio service providers and between CMRS providers and the LECs to enable the ubiquitous origination and termination of telecommunications.[31] We are not, however, advocating "expanded interconnection," i.e., physical or virtual collocation.

CMRS providers are designated as common carriers by the Omnibus Budget and Reconciliation Act and thus are

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[30] Id, at para. 121.

[31] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Comments of Pacific Bell and Nevada Bell, November 8, 1993, p. 19.

specifically subject to Section 201. Section 201 requires interconnection when the Commission determines that interconnection is in the public interest. Interconnectivity of mobile communications promotes the public interest because it enhances greater flexibility in communications and makes services more attractive to consumers. One of the goals of the Commission in providing for the regulation of PCS is the universality of service.[32] Interconnection will support this goal by enabling faster access to the service over a wide area.

However, we support interconnection only where technically feasible. As many of the CMRS providers are just beginning, imposing interconnection requirements on them that require technical changes in their networks would have a detrimental effect on their development.

The Commission also requests comment on whether to establish any interstate interconnection obligations applicable to CMRS resellers using their own switches.[33] In other words should CMRS resellers that employ their own switches be required to offer interconnection to other CMRS providers or other

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[32] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, para. 5, (1993).

[33] NPRM, para. 128.

customers? CMRS resellers using their own switches should be held to the same requirements as other CMRS providers. They should not be able to evade interconnection obligations simply by being a reseller.

IX. INTERCONNECTION ARRANGEMENTS BETWEEN CMRS PROVIDERS SHOULD NOT BE TARIFFED.

The Commission requests comment on whether interconnection arrangements between CMRS providers should be tariffed.[34] Consistent with our position that there is no need to require federal tariffs for interconnection offered by the LECs to CMRS providers, there is no need to require federal tariffing of interconnection between CMRS providers. A requirement to enter into agreements negotiated in good faith should be sufficient. Again, the Section 208 complaint process is available to any party experiencing difficulty obtaining an appropriate interconnection agreement.

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[34] Id. at para. 131.

X. THE COMMISSION SHOULD SUPPORT LIMITED INTEROPERABILITY TO PERMIT ROAMING ONTO CELLULAR ANALOG SYSTEMS BY PCS PROVIDERS.

The Commission requests comment on any matter of interoperability that should be examined in this proceeding, noting that interoperability related to "roaming" is being addressed in the FNPRM in GN Docket No. 93-252.[35]. Although we have addressed an interoperability issue related to roaming in our comments to the FNPRM in GN Docket No. 93-252, the Commission references an ex parte we did on the same subject in this proceeding so we repeat our comments here.[36]

The FCC should mandate that PCS providers have fair and non-discriminatory access to cellular analog out-of-territory networks at anytime and to cellular in-territory networks during the 10-year build-out period. This policy will benefit all customers because they will be able to use wireless services wherever they are, even at the beginning of the PCS service offering. Absent such a policy, PCS providers will not have a fair opportunity to compete with cellular providers which have a ten to twelve year head start.

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[35] Id. at para. 136.

[36] Id. at para. 137, n. 251.

Market research and customer experience reveal that customers demand to use their wireless telephone wherever they go. As cellular networks have expanded across the nation, seamless national "roaming" service has become available to cellular wireless customers. The ability to roam is essential to public acceptance of PCS and to its competitiveness with cellular service. Without the ability to roam, PCS providers will only be offering an "island" service which will compare very unfavorably with cellular service and even with some of the Specialized Mobile Radio Services that are developing. PCS providers, however, may not be able to offer the necessary ubiquity that will permit true competition with cellular service.

There are two reasons why the ubiquity that is necessary for competition with cellular will be difficult to achieve. First, PCS providers will take several years to complete their wide area network construction. During this phase, unless they are able to roam on existing cellular systems, PCS providers will not be able to ensure ubiquitous service to their customers, resulting in limited public acceptance of PCS. Secondly, a competitive consortium of cellular companies might form and create a "blockage" to roaming out-of-territory. A consortium may choose not to accommodate

roaming customers from a PCS provider with which they compete in the PCS provider's licensed service area market. It could be to the consortium's economic advantage to damage a PCS provider's competitive position in its home territory by limiting the PCS provider's roaming options out-of-territory. Cellular companies will have an advantage if PCS provides only "islands of coverage." Cellular carriers clearly understand this potential market disadvantage that PCS providers may have.

For example, Lee Cox, President of AirTouch, "estimated that it will take PCS carriers seven or eight years to deploy networks as ubiquitous as cellular and by that time cellular carriers will have improved their networks even further."[37]

When cellular service was introduced into the marketplace, roaming was easily achievable for two reasons. First, there was one technical standard for the delivery of cellular service, so there were no significant technical barriers to roaming. Second, there was no competition for cellular wireless mobile services. Thus, it was in the cellular providers' best interest to enter into roaming agreements to

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[37] Charles F Mason, AirTouch Execs Say PCS Will Play Small Role, Telephony, April 18, 1994, at 12.